



World Bank Administrative Tribunal

2011

No. 459

**BS,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**BS,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Francis M. Ssekandi, and Ahmed El-Kosheri.
2. The Application was received on 31 January 2011. The Applicant was represented by Rose Marie Dennis, and the Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 October 2011.
3. The Applicant challenges the Bank's decision not to include him on the shortlist for the position of Lead Private Sector Development Specialist, level GH, based in Accra, Ghana ("GH position") for which he applied in 2010.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 2003 as a Senior Private Sector Development Specialist under a Term appointment at level GG. In 2006 the Bank converted his Term appointment to an Open-Ended appointment.
5. In November 2009 the Bank issued a vacancy announcement for the GH position seeking applications from interested candidates by 11 January 2010. The Applicant submitted his application for the post within the prescribed period of time. In the vacancy announcement the Bank identified the following nine selection criteria:

- MA + 15 years minimum of relevant professional experiences or PhD + 12 years minimum of relevant professional experience. The ideal candidate will have a combination of experience inside and outside the World Bank and in other international organizations.
- The candidate will be expected to have in-depth knowledge and recognized expertise in several of the ... private sector development issues, as well as adequate knowledge in financial sector development issues. This will encompass both policy and technical issues and be reflected in a track record of leadership in dialogue around major financial and private sector issues
- The candidate must have experience as a task manager for a range of Bank products or similar products (from outside the Bank), including different types of loans/credits (adjustment/development policy, investment, and technical assistance). The candidate should also have served as team leader/primary author for major pieces of analytic work
- Excellent analytical skills with an ability to address both macro and micro issues and a strong track record of excellence in analytical work and policy discussions.
- A consistent track record of performance with a clear focus on results on the ground. Proven ability to integrate multi-sectoral approaches or programs and proven ability to work in interdisciplinary teams.
- The candidate should have strong leadership and teamwork skills, and proven ability to work in a culturally diverse environment.
- The candidate should have carried out work that demonstrates innovation and creativity.
- The candidate should have proven organizational skills and administrative experience.
- The candidate must have excellent communication skills, including writing and presentation skills in English. Working knowledge of French would also be desirable.

6. The hiring manager for the GH position was the Sector Director for the Africa Region's Finance and Private Sector Development Front Office ("Sector Director"). The position would report, however, to the Sector Manager of the Africa Region's Finance and Private Sector Development Unit for West and Central Africa ("AFTFW"). At the time the

position was advertised, an Acting Sector Manager occupied the latter position. This Acting Sector Manager of AFTFW managed the shortlisting process for the GH position in consultation with the Sector Director and Human Resources (“HR”).

7. The Bank set up a four-member shortlisting committee (“SLC”), whose function was to “create a shortlist of candidates considered to be the best qualified to put forward for interviews.” The SLC consisted of the following: Mr. A, Lead Financial Specialist, Finance and Private Sector Development Unit for East and Southern Africa (“AFTFE”) (Chair of the SLC); Ms. B, Senior Private Sector Development Specialist, AFTFE; Ms. C, Senior Country Officer, Africa Country Director Groups; and Mr. D, Lead Economist, Africa Technical: Poverty Reduction and Economic Management 4 (based in Accra, Ghana). In addition, an HR Officer assisted the SLC.

8. On 25 January 2010 the Acting Sector Manager of AFTFW informed the SLC by e-mail that he “would like to additionally highlight some key considerations when considering suitable candidates for the shortlist.” In the e-mail message he noted the following: “(i) the ability to effectively coordinate with other key donors to develop key policy reform actions; (ii) a strong commitment to being a team player for effective cross-network collaboration; and (iii) the ability to handle the ‘financial sector side of the business in Ghana.’”

9. The SLC met on 1 February 2010 to deliberate. On 17 February 2010 the Chair of the SLC sent an e-mail message to the Acting Sector Manager of AFTFW informing him of the outcome of the SLC’s deliberations. The SLC Chair explained in the e-mail message that before the meeting, each member of the SLC had received and reviewed the job advertisement and the candidates’ applications. He explained further that at the beginning of the meeting, the SLC reviewed the selection criteria and it was emphasized that the

successful candidate for the position would be expected to guide or supervise a broad range of projects. The SLC reviewed the applications of seven candidates, including the Applicant, who were “longlisted” for the position (and it appears that all seven were internal candidates either working at the Bank or the International Finance Corporation). The SLC concluded that only two of the candidates merited further consideration and recommended that they be included on the shortlist for the position. The Applicant was not included on the shortlist. In the same e-mail message, the Chair noted that: “Some of the claims made in the [Applicant’s] CV do not appear credible. [The Applicant] does not appear to have the depth and range of technical expertise specified in the selection criteria for this position.”

10. According to the Bank, the Acting Sector Manager of AFTFW “was surprised that Applicant was not among the shortlisted candidates.” After consulting with the Sector Director and HR, the Acting Sector Manager of AFTFW decided to seek further verification of the SLC’s decision not to include the Applicant on the shortlist. To this end, he sought assistance from a peer manager who was also a member of the Finance and Private Development Sector Board, which had to clear shortlisting recommendations for positions at GH level, to verify the substantive decision of the SLC as a matter of additional due diligence.

11. The peer manager submitted his report to the Acting Sector Manager of AFTFW by e-mail on 10 March 2010. In that report the peer manager noted *inter alia* that:

I have been in touch with about ten people and over half have got back in touch with me either by e-mail or on the phone. The most positive commentators felt that he was smart and was an innovative thinker – while indicating that he could not communicate his ideas very well. Indeed, poor communication skills was a consistent theme from almost every feedback provider. At the other end of the spectrum (where most commentators were positioned) they felt that he did not have a lot of substance – particularly in

FSD, maybe a little more in PSD – and, even within PSD, several people did not feel that he had the depth of experience that one would like to have in a private sector specialist – particularly at the GH level. One commentator said that he did not feel that he was a strong economist.

A lot of comments came up on his interpersonal skills – where feedback providers were fairly scathing about him – using fairly strong language, generally not heard within the Bank in these types of feedback exercises. Difficult, pushy, not a good ambassador, shocked at his behaviors, does not listen, has little value added, etc.

....

As discussed – I spoke with both native French speakers and with Africans – as well as native English speakers. So these views come from a wide spectrum of backgrounds.

Accordingly, the peer manager concluded that, based on the information he had obtained from the Applicant’s colleagues, his recommendation would be not to include the Applicant on the shortlist of candidates for the GH position.

12. After reviewing the above report, the Acting Sector Manager of AFTFW sent the SLC’s recommendation to the Finance and Private Development Sector Board for formal clearance. The Sector Board concurred with the SLC’s recommendation, and according to the Bank, “specifically agreed that Applicant was appropriately not shortlisted.”

13. On 15 March 2010 the Acting Sector Manager of AFTFW informed the Applicant that he was not shortlisted for the GH position. According to the Applicant, the reasons the Acting Sector Manager provided for this decision were: (i) he had no work experience in Bank regions other than Africa, which did not meet level GH selection criteria; and (ii) because he had already served seven years in the Africa Region, and he should, in accordance with the Bank’s seven-year rotational rule, look for opportunities in other regions of the Bank.

14. On the same day, the Applicant sent an e-mail message to the Sector Director (who was also the hiring manager for the position) stating that “I have strong and well-documented views that the process of making the shortlist was biased and geared towards denying me the possibility of an interview in order to compete and further serve our institution and its client countries.” The Sector Director responded to the Applicant on the same day and told him that in view of “these serious allegations,” she would ask two HR officers to “see if they can look at the background and the reasons for your not being shortlisted.”

15. The HR officers conducted a further review of the shortlisting process and, on 31 March 2010, met with two of the SLC members, including the Chair. The HR officers discovered that the SLC had not reviewed the Overall Performance Evaluations (“OPEs”) of the candidates as part of the process. The HR officers thus asked the SLC to conduct another review of the applications, including the OPEs. The SLC conducted a second review of all of the candidates’ applications, taking into account their OPEs. The SLC determined that the additional review including the OPEs did not alter their original decision not to include the Applicant on the shortlist.

16. On 7 April 2010 the HR officers informed the Sector Director by e-mail of their findings and their confirmation of the SLC’s decision not to include the Applicant on the shortlist. Thereafter, on 28 April 2010, the Sector Director sent an e-mail message to the Applicant, stating:

I asked HR to look into this matter. They have followed up with the shortlisting panel for further justification on the process. The main reasons for your not being shortlisted are:

- your breadth of experience was not as substantive – more so in FSD – when compared to the other candidates on a relative basis;

- though you do have multi-regional experience, it did not measure up to the experience of the shortlisted candidates. You may well be advised to gain some experience in another region to further strengthen your credentials to be considered for a prospective GH position.

17. On 11 May 2010 the Applicant filed a Request for Review before Peer Review Services (“PRS”) challenging the Bank’s decision not to shortlist him for the GH position.

In its report of 6 August 2010, PRS concluded that

the Bank’s decision not to select [the Applicant] during the shortlisting process ... was reasonable, and that it followed a proper process in the manner in which it made the decision, and that [the Sector Director] did not discriminate or retaliate against the Applicant. The Panel, however, finds that the manner in which the Bank informed [the Applicant] of the reasons why the SLC did not select him ... was contrary to Principles 2.1 and 9.1 of the Principles of Staff Employment, and resulted in harm to [the Applicant].

18. PRS recommended that the Applicant be compensated in the amount of one month’s net salary. The Bank accepted this recommendation and so informed the Applicant on 7 September 2010.

19. On 31 January 2011 the Applicant filed his Application with the Tribunal challenging the Bank’s decision not to include him on the shortlist.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s contentions

20. The Applicant contends that the Bank provided him with different reasons at different times when he insisted on having them. The first set of reasons was given by the Acting Sector Manager in March 2010. The reasons were as follows: (i) the Applicant had no working experience in other Bank regions apart from Africa; and (ii) the seven-year rotation rule was applicable to him. The Applicant adds that the second set of reasons was revealed to him only at the PRS proceedings. They were as follows: “doubts on his understanding of the lead role and ability to work with other units of the Country Team,

PREM notably,” and that “[h]is successive ratings on teamwork do not tend to infirm the impression.” The Applicant also states that a third set of reasons why he was not selected came to light also during the PRS proceedings and those reasons were as follows: (i) some of the claims made in his curriculum vitae did not appear credible; and (ii) he did not appear to have the depth and range of technical expertise specified in the selection criteria. Finally, the Applicant states that a fourth set of reasons was given by the Sector Director and the reasons were as follows: (i) the Applicant’s “breadth of experience was not as substantive”; and (ii) although he does have multi-regional experience, such experience did not measure up to the experience of the shortlisted candidates.

21. The Applicant then claims that the Bank had not substantiated all the different reasons it gave for its decision. He adds that a proper review of the record demonstrates that he met the selection criteria for the GH level in general and this GH position in particular. The Applicant contends that, to the contrary, the selected candidate did not meet the selection criteria for the position. In sum, the Applicant claims that the Bank’s decision not to shortlist him was arbitrary, unfair and without a proper basis.

22. The Applicant also claims that the decision not to shortlist him was retaliatory. He adds that the SLC discriminated against him in favor of the selected candidate who did not meet the selection criteria. He states that:

[The Sector Director], the Recruiting Manager, [the Acting Sector Manager], the SLC, or certain members of the SLC, and certain HR officers ... conspired to conceal from him the real reason underlying the decision not to shortlist him, which, in the Applicant’s view, was not in accordance with the Bank’s standards of ethics and integrity.

In this regard he makes reference to certain events that occurred between 2004 and 2006 involving his former Sector Manager and former Sector Director. He claims that these

former managers were unfavorably disposed towards him and took actions inhibiting his career advancement.

23. The Applicant also claims that the Bank failed to follow a proper process and violated his due process rights in making the decision in question. The Applicant explains that it is not usual to conduct due diligence reviews on applicants at the shortlisting stage and the Bank does not explain why the due diligence was conducted only with respect to him. In addition, he contends, the Bank has not provided detailed documentation about how the additional due diligence was conducted. The Applicant adds that he was denied due process because he was not given an opportunity to present evidence concerning his credentials. He further states that “the reason stated in the e-mail containing the outcome of the SLC process, namely that he had lied about his credentials in his curriculum vitae, was not verified through proper due diligence from checking either the Bank’s record system or otherwise despite his request that this be done.”

24. As remedies, the Applicant requests the Tribunal to: (i) rescind the decision not to shortlist him; (ii) appoint him to the GH position with effect from 1 April 2010 with all the associated salary and benefits; (iii) pay compensation for moral and professional damage; and (iv) award him “attorney’s fees in the amount of \$76,968.75, and costs in the amount of \$1,025.25.”

The Bank’s contentions

25. The Bank contends that it should be allowed to hire the staff that it believes will best provide assistance to the institution. The Tribunal should allow management, which has the specialized expertise, to exercise its discretion to do so. There is no evidence that the Bank abused its discretion in this case.

26. The Bank adds that a properly constituted SLC made the determination not to shortlist the Applicant; the Tribunal should not second-guess this determination. While the Applicant disagrees with the conclusion of the SLC, there is no reason to accept his subjective self-assessment on this subject over the decision of the SLC. The Bank adds that the Applicant was not given contradictory reasons for its decision, and the reasons explained to the Applicant were not intended to represent a comprehensive transcript of the deliberations of the SLC.

27. The Bank argues that the Applicant has not shown evidence that any bias or improper motivation was present in the considerations of the SLC. Nor has he shown that the Acting Sector Manager or the Sector Director in any way acted in a manner that demonstrated bias or improper motivations against him. To the contrary, these managers actually intervened in his favor and sought to ensure that there was no basis to reverse the SLC's recommendation.

28. The Bank contends that it followed a proper process in this matter. The Bank did not violate any applicable rules by engaging the peer manager to conduct a further "due diligence" check in this case. While the Bank's procedure for further "reference checking" applies only to shortlisted candidates, the Acting Sector Manager in this case requested the due diligence as an additional step in an effort to confirm that all considerations had been taken into account in excluding the Applicant from the shortlist. The Bank also asserts that the decision to exclude the Applicant from the shortlist did not violate the Applicant's due process rights in any manner; his application was accorded additional consideration in response to his requests, and the Bank did not abuse its discretion when it made this personnel decision that happens to be contrary to the Applicant's wishes. Accordingly, the Bank requests the Tribunal to reject his claims.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

29. In *Riddell*, Decision No. 255 [2001], para. 23, the Tribunal stated that:

With regard to decisions to select staff members for positions, the Tribunal has held:

[A] decision by the Bank to select a staff member for a particular position rests within the Bank's discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused. "The Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." *Suntharalingam*, Decision No. 6 [1981], para. 24. The Tribunal will not set aside a decision by the Bank unless it was "reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness." *de Raet*, Decision No. 85 [1989], para. 67.

(*Jassal*, Decision No. 100 [1991], para. 30.) It is clear from the above jurisprudence, that no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.

30. The Tribunal will review the contested decision in accordance with these standards.

31. The record shows seven internal candidates including the Applicant were "longlisted" for the GH position. The Bank formed a four-member SLC to review these applications and come up with a shortlist for the interview stage. The SLC consisted of senior officials in the Bank with relevant expertise in the functions of the advertised position as described in paragraph 7 of this judgment.

32. The Bank's Shortlisting Guidelines state that: "A Hiring Manager will typically convene a short-listing committee (SLC) of up to 4 people, with at least one from outside

the hiring Unit.” In this case the SLC was properly constituted. Each member of the SLC reviewed the vacancy announcement, the selection criteria, and the application package of all the seven candidates. After reviewing these materials, as well as the e-mail message from the Acting Sector Manager that highlighted his suggested areas of emphasis, the SLC identified and recommended two candidates for further consideration; the Applicant was not one of them.

33. In addition, the SLC’s evaluation of the candidates was reviewed independently to ensure that the Applicant, who was not shortlisted, had not been omitted unfairly. After the SLC completed its process, the Acting Sector Manager of AFTFW requested a peer manager who was also a member of the Finance and Private Development Sector Board to perform a further review of the process, as a matter of “due diligence,” to make sure that the Applicant had not been improperly excluded. The report of the peer manager is part of the record before the Tribunal. Out of the ten contacted, the peer manager received feedback from at least five of the Applicant’s colleagues of diverse backgrounds. The feedback received by the peer manager was essentially negative and did not support the Applicant being shortlisted for the position. After reviewing the peer manager’s findings, the Acting Sector Manager concluded that there was no reason to question the SLC’s determination and accordingly sent the SLC’s recommendation to the Finance and Private Development Sector Board for formal clearance. The Sector Board reviewed the SLC’s evaluation and recommendation and agreed not to include the Applicant on the shortlist for the interview. Accordingly, in March 2010, the Acting Sector Manager told the Applicant that he was not being shortlisted for the GH position.

34. Following the Applicant’s challenge of the SLC’s recommendation, the Sector Director requested HR to conduct another review. In the course of this review the SLC was

asked to re-examine its position taking account of the candidates' OPEs. However, the SLC came back with the same recommendation. The Applicant then challenged the SLC's determination before PRS, which conducted a hearing on this matter and concluded that "the Bank's decision not to select [the Applicant] during the shortlist process ... was reasonable."

35. Based on the record as a whole, the Tribunal finds that the Applicant has failed to demonstrate that the SLC's decision was arbitrary or lacked a reasonable basis. There is no evidence that the SLC was not properly constituted. The record shows that the members of the SLC had the necessary background and expertise to determine which candidates would be most suitable for this GH position and included members outside the Applicant's unit, as required under the applicable guidelines. In the circumstances, the Tribunal is unable to overrule the evaluation by the SLC. As the Tribunal has held: "The identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks." *Garcia-Mujica*, Decision No. 192 [1998], para. 13; *BK*, Decision No. 444 [2010], para. 41.

36. The Applicant points to the fact that the Bank gave him different reasons on different occasions for not being included on the shortlist. The Tribunal notes that there is no established procedure requiring the Bank to provide elaborate reasons to non-shortlisted candidates. In this case, not only did the SLC provide reasons, but the Acting Sector Manager, and the Sector Director also provided him with reasons why he had not been included on the shortlist. The reasons for the Applicant's non-selection are contained in the e-mail message from the Chair of the SLC dated 17 February 2010, the communication to the Applicant by the Acting Sector Manager on 15 March 2010, the e-mail exchanges of the SLC members, and the e-mail message of the Sector Director to the Applicant dated 28

April 2010. The Tribunal does not find that the reasons contained in those communications were contradictory or that they provide a basis for questioning the SLC's deliberations and findings. It appears from the record that the Applicant's managers went to great lengths not to include in the reasons given to the Applicant the very negative assessments obtained during the "due diligence" about his suitability for the post. It may very well be that, in doing so, the wording of their communications to him for not having been selected appeared to differ, but, in essence, the communications contained the same message regarding the Applicant's suitability for the position. Considering the record as a whole, the Tribunal finds that the Applicant has been given a reasonable opportunity to question the grounds for the shortlisting decision.

37. The Applicant has produced evidence that demonstrates that he is a good performer with a good record of service, and this is the basis of his own assessment of his suitability for the GH position. However, as the Tribunal has stated before that good performance alone does not entitle a staff member to promotion or to be included on the shortlist for a position (*see McKinney*, Decision No. 187 [1998], para. 16; *Riddell*, Decision No. 255 [2001], para. 23; *AI*, Decision No. 402 [2010], para. 73).

38. The Applicant also claims that the decision not to include him on the shortlist was retaliatory and discriminatory. He has failed to provide evidence of these allegations. The Applicant does not provide any cogent reasons why the four members of the SLC, the Acting Sector Manager, the Sector Director, the peer manager, and the HR officers would all conspire together to exclude him from the shortlist as part of a retaliatory and discriminatory scheme. The Applicant accuses his past managers of conspiracy to derail his career, but there is nothing in the record to suggest that any of those managers mentioned were involved in the selection process.

39. In light of the foregoing considerations, the Tribunal does not find the Applicant's claims persuasive.

DECISION

For the foregoing reasons, the Tribunal dismisses the Applicant's claims.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 11 October 2011